

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1395

Citations Affected: IC 5-22; IC 36-1-12.5.

Synopsis: Government purchasing. Provides that if an offeror offers to furnish supplies made in a country other than the United States, a governmental body may not award a contract to the offeror for those supplies if the supplies were made using forced labor. Provides that a solicitation by a state or local governmental entity for the purchase of supplies must require that if any steel products are used in the manufacture of the supplies, the steel products must be manufactured in the United States. Provides that a solicitation by a state or local governmental entity for the purchase of services must require that if any steel products are used in the manufacture of the supplies used in the performance of the contract, those steel products must be manufactured in the United States. Waives the requirements for certain small purchases and establishes other circumstances under which the requirements may be waived. Provides that an Indiana taxpayer has standing to challenge a determination to waive the requirement or to enforce a contract for steel products that contains the requirement. Specifies that future labor, contracted services, and related capital expenditures may be considered by a governing body for purposes of entering into guaranteed energy savings contracts. Provides that a governing body may not enter into an energy savings agreement or stipulate as to savings under the agreement without appropriate architectural, engineering, or accounting studies. Requires that stipulated savings must be determined and documented as specified in the approved studies. Requires the Indiana department of commerce to adopt administrative rules on guaranteed energy savings contracts. Makes a conforming amendment. (This conference committee report does the following: Provides that a solicitation by a state or local governmental entity for the purchase of supplies must require that if any steel products are used in the manufacture of the supplies, the steel products must be manufactured in the United States. Provides that a solicitation by a state or local governmental entity for the purchase of services must require that if any steel products are used in the manufacture of the supplies used in the performance of the contract, those steel products must be manufactured in the United States. Waives the requirements for certain small purchases and establishes other circumstances under which the requirements may be waived. Provides that an Indiana taxpayer has standing to challenge a determination to waive the requirement or to enforce a contract for steel products that contains the requirement. Specifies that future labor, contracted services, and related capital expenditures may be considered by a governing body for purposes of entering into guaranteed energy savings contracts. Provides that a governing body may not enter into an energy savings agreement or stipulate as to savings under

the agreement without appropriate architectural, engineering, or accounting studies. Requires that stipulated savings must be determined and documented as specified in the approved studies. Requires the Indiana department of commerce to adopt administrative rules on guaranteed energy savings contracts. Makes a conforming amendment.)

Effective: July 1, 2001.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1395 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Page 1, line 1, delete "IC 5-22-15-24" and insert "IC 5-22-15-24.2".
- 2 Page 1, line 3, delete "Sec. 24." and insert "**Sec. 24.2.**".
- 3 Page 1, after line 10, begin a new paragraph and insert:
- 4 "SECTION 2. IC 5-22-15-25 IS ADDED TO THE INDIANA CODE
- 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 6 1, 2001]: **Sec. 25. (a) As used in this section, "steel products" means**
- 7 **products rolled, formed, shaped, drawn, extruded, forged, cast,**
- 8 **fabricated, or otherwise similarly processed, or processed by a**
- 9 **combination of two (2) or more such operations, by the open**
- 10 **hearth, basic oxygen, electric furnace, Bessemer, or other steel**
- 11 **making process.**
- 12 **(b) As used in this section, "United States" includes all territory,**
- 13 **continental or insular, subject to the jurisdiction of the United**
- 14 **States.**
- 15 **(c) Unless the head of the purchasing agency makes a written**
- 16 **determination described in subsection (d), a solicitation must**
- 17 **require that if any steel products are used in:**
- 18 **(1) the manufacture of the supplies required under the**
- 19 **contract; or**
- 20 **(2) supplies used in the performance of the services under the**
- 21 **contract by the contractor or a subcontractor of the**
- 22 **contractor;**

1 the steel products must be manufactured in the United States.

2 (d) Subsection (c) does not apply if the:

3 (1) head of the purchasing agency determines in writing that:

4 (A) the cost of the contract with the requirements of
5 subsection (c) would be greater than one hundred fifteen
6 percent (115%) of the cost of the contract without the
7 requirements of subsection (c); and

8 (B) failure to impose the requirements of subsection (c)
9 would not in any way:

10 (i) harm the business of a facility that manufactures steel
11 products in Indiana; or

12 (ii) result in the reduction of employment or wages and
13 benefits of employees of a facility described in item (i); or

14 (2) purchase is:

15 (A) less than ten thousand dollars (\$10,000); and

16 (B) made under the small purchase policies (as described in
17 IC 5-22-8-2(b)) established by the purchasing agency or
18 under rules adopted by the governmental body.

19 (e) A purchasing agency shall inform offerors in the solicitation
20 of the provisions of this section.

21 SECTION 3. IC 5-22-17-14 IS ADDED TO THE INDIANA CODE
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
23 1, 2001]: **Sec. 14. A contract awarded under this article must**
24 **include the requirements of IC 5-22-15-25(c) unless the head of the**
25 **purchasing agency makes a determination under IC 5-22-15-25(d).**

26 SECTION 4. IC 5-22-19-5 IS ADDED TO THE INDIANA CODE
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
28 1, 2001]: **Sec. 5. An Indiana taxpayer has standing to:**

29 (1) challenge a determination made under IC 5-22-15-25(d);
30 and

31 (2) enforce a contract provision required by IC 5-22-17-14, if
32 the contract is related to steel products (as defined in
33 IC 5-22-15-25(a)) or supplies manufactured by steel products.

34 SECTION 5. IC 36-1-12.5-1 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 1.** As used in this
36 chapter, "energy conservation measure" means a school facility
37 alteration or an alteration of a structure (as defined in IC 36-1-10-2)
38 designed to reduce energy consumption costs or other operating costs,
39 including the following:

40 (1) Providing insulation of the school facility or structure and
41 systems within the school facility or structure.

42 (2) Installing or providing for window and door systems, including:

43 (A) storm windows and storm doors;

44 (B) caulking or weatherstripping;

45 (C) multi-glazed windows and doors;

46 (D) heat absorbing or heat reflective glazed and coated windows
47 and doors;

48 (E) additional glazing;

49 (F) the reduction in glass area; and

50 (G) other modifications that reduce energy consumption.

51 (3) Installing automatic energy control systems.

(4) Modifying or replacing heating, ventilating, or air conditioning systems.

(5) Unless an increase in illumination is necessary to conform to Indiana laws or rules or local ordinances, modifying or replacing lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility or structure.

(6) Providing for other energy conservation measures that reduce energy consumption or reduce operating costs, **including future labor, contracted services, and related capital expenditures.**

SECTION 6. IC 36-1-12.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) The governing body may enter into an agreement with a public utility to participate in a utility energy efficiency program or enter into a guaranteed energy savings contract with a qualified provider to reduce the school corporation's or the political subdivision's energy consumption costs or operating costs if, after review of the report described in section 6 of this chapter, the governing body finds:

(1) that the amount the governing body would spend on the energy conservation measures under the contract and that are recommended in the report is not likely to exceed the amount to be saved in energy consumption costs and other operating costs over ten (10) years from the date of installation if the recommendations in the report were followed; and

(2) in the case of a guaranteed energy savings contract, the qualified provider provides a written guarantee as described in subsection (d)(2).

(b) Before entering into an agreement to participate in a utility energy efficiency program or a guaranteed energy savings contract under this section, the governing body must publish notice under subsection (c) indicating:

(1) that the governing body is requesting public utilities or qualified providers to propose energy conservation measures through either a utility energy efficiency program or a guaranteed energy savings contract; and

(2) the date, the time, and the place where proposals must be received.

(c) The notice required by subsection (b) must:

(1) be published in two (2) newspapers of general circulation in the county where the school corporation or the political subdivision is located;

(2) be published two (2) times with at least one (1) week between publications and with the second publication made at least thirty (30) days before the date by which proposals must be received; and

(3) meet the requirements of IC 5-3-1-1.

(d) An agreement to participate in a utility energy efficiency program or guaranteed energy savings contract under this section must provide that:

(1) all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever

applies) in installments, not to exceed the lesser of ten (10) years or the average life of the energy conservation measures installed from the date of final installation; and

(2) in the case of the guaranteed energy savings contract:

(A) the savings in energy and operating costs due to the energy conservation measures are guaranteed to cover the costs of the payments for the measures; and

(B) the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings; and

(3) payments are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(e) An agreement or a contract under this chapter is subject to IC 5-16-7.

(f) The governing body may not enter into an agreement or stipulate as to savings under the agreement without appropriate architectural, engineering, or accounting studies. Stipulated savings shall be determined and documented as specified under the approved studies.

SECTION 7. IC 36-1-12.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) The governing body shall annually report to the department of commerce, in accordance with procedures established by the department of commerce, the savings resulting in the previous year from the guaranteed energy savings contract or utility energy efficiency program.

(b) The department of commerce shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 8. [EFFECTIVE JULY 1, 2001] **Notwithstanding IC 36-1-12.5-10, as amended by this act, not later than January 1, 2002, the department of commerce shall propose the rules required in IC 36-1-12.5-10(b)."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1395 as printed March 23, 2001.)

Conference Committee Report
on
Engrossed House Bill 1395

Signed by:

Representative Kuzman
Chairperson

Senator Merritt

Representative Atterholt

Senator Craycraft

House Conferees

Senate Conferees